

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Telecommunications Carriers Eligible to)	
Receive Universal Service Support)	WC Docket No. 09-197
)	
Petition of NTCH, Inc. for Forbearance)	
Pursuant to 47 U.S.C. § 160(c) from)	
47 U.S.C. § 214(e)(5) and 47 C.F.R.)	
§ 54.207)	

REPLY COMMENTS OF

**CALAVERAS TELEPHONE COMPANY (U 1001 C)
CAL-ORE TELEPHONE CO. (U 1006 C)
DUCOR TELEPHONE COMPANY (U 1007 C)
FORESTHILL TELEPHONE CO. (U 1009 C)
HAPPY VALLEY TELEPHONE COMPANY (U 1010 C)
HORNIOS TELEPHONE COMPANY (U 1011 C)
KERMAN TELEPHONE CO. (U 1012 C)
PINNACLES TELEPHONE CO. (U 1013 C)
THE PONDEROSA TELEPHONE CO. (U 1014 C)
SIERRA TELEPHONE COMPANY, INC. (U 1016 C)
THE SISKIYOU TELEPHONE COMPANY (U 1017)
VOLCANO TELEPHONE COMPANY (U 1019 C)
WINTERHAVEN TELEPHONE COMPANY (U 1021 C)
("CALIFORNIA RURAL ILECS")**

ON

PETITION FOR FORBEARANCE OF NTCH, INC.

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I. INTRODUCTION.

Based on the procedural schedule outlined in Public Notice DA 11-1140, released on June 29, 2011, Calaveras Telephone Company (U 1001 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C) (the "California Rural ILECs") hereby offer this reply to the comments of TracFone Wireless, Inc. ("TracFone") on the Petition for Forbearance ("Petition") of NTCH, Inc. ("NTCH").

TracFone was the only other party who filed comments on the Petition. TracFone's arguments in support of the Petition suffer from many of the same flaws as those in the NTCH Petition. TracFone alleges that NTCH and TracFone "need" forbearance from the service area requirement in order to be designated as "Lifeline only" ETCs. *TracFone Opening Comments*, at p. 2. This claim is wholly contradicted by the availability of the service area redefinition process, a longstanding process that it does not appear TracFone has invoked or attempted to fulfill in any state. TracFone also cites to its experiences in Indiana, Kansas, and Oregon as evidence that 47 U.S.C. Section 214(e)(5) is "problematic," but these testimonials only prove that those state commissions are correctly interpreting and applying federal law. *TracFone Opening Comments*, at p. 2. The fact that TracFone was called upon to abide by the rural service area requirement in those states is not a reason to remove the requirement, nor is it a reason to grant NTCH's Petition.

TracFone variously argues that Congress did not intend to apply the "service area"

requirement to "Lifeline only" requests, that state commissions are adopting unduly "narrow readings" of the requirement, and that the requirement should not apply where there is no "creamskimming." *TracFone Opening Comments*, at pp. 3-4. Contrary to these assertions, Congress clearly intended to apply the service area requirement to all ETC requests, as there is no statutory exception made for "Lifeline only" requests, whether such requests were anticipated or not. No "narrow reading" is necessary to see that the requirement applies. Nor can the service area requirement be confined to the "creamskimming" analysis in connection with high-cost requests. Indeed, the reasoning of the *Virginia Cellular*¹ order cited by TracFone undercuts TracFone's limited view of the requirement, as the FCC recognized in that case that "*granting a carrier ETC designation for only its licensed portion of the rural study area may have the same effect on the ILEC as rural creamskimming.*" *Virginia Cellular*, at ¶ 33. This is precisely the issue that the California Rural ILECs wish to preserve for consideration by state commissions.

Neither NTCH nor TracFone has demonstrated that forbearance from the rural service area requirement is in the public interest, or that the requirement is not necessary to protect customers in rural telephone company service areas. The Petition does not meet the standard under 47 U.S.C. Section 160(a)(2) or (a)(3), and it should be denied.

II. TRACFONE'S ALLEGATIONS ABOUT STATE COMMISSION REVIEW OF ITS OWN ETC REQUESTS CANNOT JUSTIFY FORBEARANCE FROM THE SERVICE AREA REQUIREMENT.

Forbearance cannot be justified on the grounds that state commissions refuse to ignore federal law in reviewing TracFone's ETC requests. TracFone argues that forbearance is

¹ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (released January 22, 2004) ("*Virginia Cellular*").

necessary to avoid "problematic" interpretations and applications of the service area requirement. *TracFone Opening Comments*, at p. 2. However, the only examples that TracFone cites involve states that have properly exercised their power to review ETC requests through straightforward applications of the service area requirement. In both Kansas and Indiana, TracFone could not serve the entirety of various rural telephone company service territories.² 47 U.S.C. Sections 214(e)(1)(A) and (e)(5) make clear that a prospective ETC must serve the entirety of rural exchanges. Since TracFone could not do so, and since TracFone did not seek redefinition of those service areas, the Kansas and Indiana commissions correctly concluded that TracFone's authority must be limited to the rural areas that it could completely serve. Similarly, the Oregon commission has reasonably asked TracFone to produce a coverage map, in part to assess which rural service areas TracFone can entirely cover. *See TracFone Opening Comments*, at p. 3.

There is nothing "problematic" about these state commission actions, as they flow directly from federal law. TracFone should not have been surprised about the limitations on its ETC designation in Kansas and Indiana, as TracFone did not avail itself of the only way that it could lawfully be designated as an ETC in rural telephone company areas. TracFone did not seek redefinition of rural service areas in either the Kansas or the Indiana case. Rather, TracFone simply asked those state commissions to ignore the service area requirement. In both Kansas and Indiana, TracFone stated that "[t]he Commission may designate TracFone as an ETC in rural telephone company service areas upon a finding that such designation would serve the public

² *Order Granting in Part and Denying in Part Amended Application of TracFone for Designation as ETC for the Limited Purpose of Offering Lifeline Services to Qualified Households*, Docket No. 09-TFWZ-945-ETC (Kansas Corporation Commission, December 14, 2010); *Order on ETC Application*, Cause No. 41052 ETC 54 (Indiana Utility Regulatory Commission, June 29, 2010).

interest."³ This is not a correct or complete statement of the law. It has been well established that a prospective ETC must either serve the entirety of a rural service area, or seek redefinition of that area pursuant to 47 C.F.R. Section 54.207. Having chosen not to utilize the redefinition process, TracFone cannot now complain that the state commissions have enforced the service area requirement.

TracFone's experiences in Kansas, Indiana, and Oregon do not support NTCH's request for forbearance. TracFone's and NTCH's desires to avoid the redefinition process cannot in themselves make forbearance from the service area requirement in the public interest. As the California Rural ILECs urged in their opening comments, there are many strong public policy reasons to retain the service area requirement, including concerns regarding the continuing availability of service to consumers throughout rural telephone company service territories. Enforcement of the requirement continues to be in the public interest, and is an important protection for rural consumers. It should be retained.

III. THE RURAL SERVICE AREA REQUIREMENT AND THE SERVICE AREA REDEFINITION PROCESS ARE NOT LIMITED TO CONCERNS ABOUT "CREAMSKIMMING."

Like NTCH, TracFone argues that the service area requirement is meaningless where there is no high-cost "creamskimming." *TracFone Opening Comments*, at p. 4. TracFone cites *Virginia Cellular* for this proposition, but the FCC's discussion of the service area requirement in *Virginia Cellular* reveals that the inquiry is broader than TracFone supposes. In *Virginia*

³ *Verified Petition of TracFone Wireless for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of Offering Lifeline Service to Qualified Households* (filed June 22, 2009), at p. 17; *Application of TracFone Wireless for Designation as an Eligible Telecommunications Carrier in the State of Indiana for the Limited Purpose of Offering Lifeline Service to Qualified Households* (filed June 5, 2009), at p. 16. TracFone adopted a similar approach in California until it amended the scope of its ETC request in response to a protest from the California Rural ILECs.

Cellular, the FCC noted that

[W]e recognize that, for reasons beyond a competitive carrier's control, the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier's license covers. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study area may have the same effect on the ILEC as rural creamskimming. *Virginia Cellular*, at ¶ 33.

In other words, the FCC acknowledged that even where a carrier may not be intentionally targeting low-cost areas, the effect of designating a carrier as an ETC in only the lowest-cost portions of a rural telephone company exchange can have impacts on the rural carrier and its customers that ought to be considered before granting ETC authority in that area. Ultimately, the FCC concluded that certain rural telephone company exchanges should be excluded from *Virginia Cellular's* ETC footprint, even though *Virginia Cellular* had not intentionally targeted the low-cost portions of those rural exchanges that coincided with its coverage area.

Virginia Cellular involved a request for high-cost support, but the principle embodied in the FCC's examination of the rural service area requirement is still applicable in examining "Lifeline only" requests. There is still a role for state commissions to consider whether it is reasonable to permit wireless ETCs to serve only small portions of rural telephone company territories. As discussed in the California Rural ILECs' opening comments, these ETC requests can have significant competitive and funding consequences for small, rural, rate-of-return carriers with high numbers of Lifeline customers. Any "Lifeline only" ETC could create these problems for the California Rural ILECs, but if such a provider cannot serve the entirety of the underlying service areas in which it seeks designation, customers in the hardest-to-serve, remote areas of those exchanges are put at risk. State commissions can and should continue to consider these impacts in evaluating "Lifeline only" ETC requests.

IV. CONCLUSION.

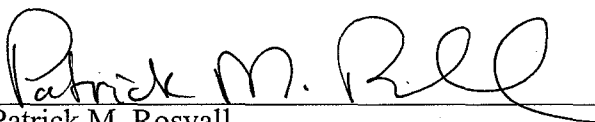
TracFone's arguments in support of the NTCH Petition do not provide justification for the Petition to be granted. The Petition does not satisfy either the "public interest" standard or the "consumer protection" standard under 47 U.S.C. Section 160, so forbearance is not warranted. The Petition should be rejected, and the matter should continue to be handled through redefinition requests and public interest analyses conducted by state commissions.

Dated this 15th day of August, 2011, at San Francisco, California.

Respectfully submitted,

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